

Meeting

Subject: Commerce

Lesson: Meeting

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Meeting

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Introduction

Since a company is an artificial person, it cannot act on its own. It needs people to transact its business and for that it needs authoritative people to meet and discuss relevant matters. Shortly after the formation of a company, a lot of decisions regarding the management of the company's business is left to the discretion of the directors. However the ultimate control regarding all the major decisions lies with the shareholders of the company, and for taking such major decisions these people (i.e. directors and the shareholders) formally come together to transact the business lawfully which is termed as a Meeting and the decision taken during the meeting is expressed in the form of a Resolution¹.

There are different types of company meetings held for different purposes. The first introductory meeting of a public company is termed as a Statutory Meeting. After that, each year company is to hold its Annual General Meeting. In addition to this if something urgent comes up then it is discussed in an Extraordinary General Meeting. Also there are Board Meetings, Class Meetings of different classes of shareholders, and Meetings of Creditors and Debenture holders.

¹ Resolution is the decision taken at the meeting.



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6.1 Kinds of Meetings

A **meeting** is defined as “when two or more than two persons come together to discuss issues of common interest”. For a meeting to be valid and the business transacted in it to be binding, the meeting must be convened as per the provisions of the Companies Act 1956, and the rules framed there under.



Figure 6.1: Meetings

In a company there are different types of meetings which are held for different purposes. The different types of meetings are given below:

1. Meetings of Shareholders:

- a. Statutory Meeting
- b. Annual General Meeting
- c. Extra –Ordinary General Meetings
- d. Class Meeting

2. Meetings of Directors:

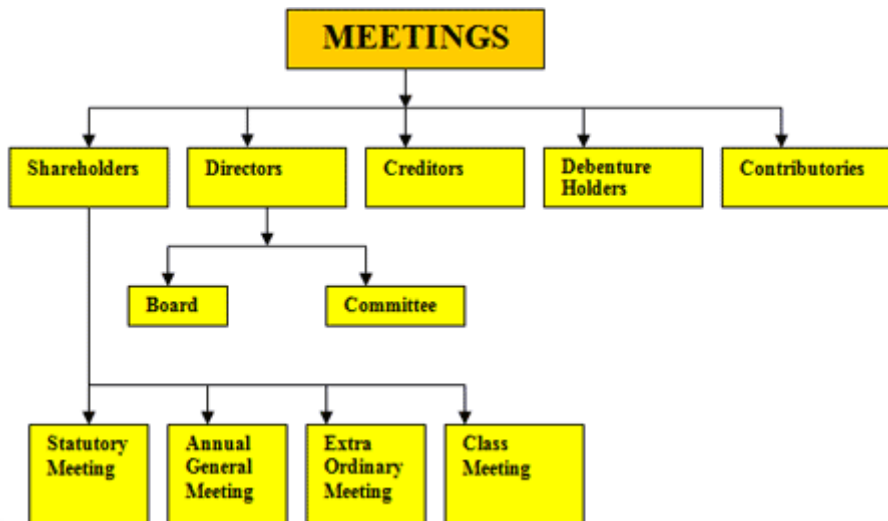
- a. Meeting of the Board of Directors
- b. Meeting of the Committees of Directors

3. Meeting of Debenture Holders

4. Meeting of Creditors

5. Meeting of Creditors and Contributories for the winding up of a company

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6.1.1 Statutory Meeting

Section 165 provides that "Every company limited by shares and every company limited by guarantee and having a share capital shall within a period of **not less than one month** but not more than six months from the date the company is entitled to commence business, hold a meeting of the members of the company.

This is called as **Statutory Meeting**".

It implies that statutory meeting is the first official general meeting of the shareholders. It is held once in the lifetime of the company. The meeting called before one month is not a statutory meeting.

The statutory meeting cannot be held by the following:



Figure 6.2: Once in a lifetime Meeting

- A private company, whether independent or subsidiary of a public company
- A public company not having share capital
- A public company having liability of its members unlimited
- A public company having liability of its members limited by guarantee and not having share capital
- A Government Company, whether registered as a private or public company.

Object of the meeting

The object of the Statutory Meeting is to put the shareholders of the company, at as early as possible, in possession of all the important facts relating to the new company.

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Thus, a company holds statutory meeting of its members primarily with the following two main objectives:

- a. To discuss the success of the floatation of the company
- b. To get the approval of the members for any modification in a contract specified in the prospectus.

Notice of the Statutory Meeting

- Section 171 provides that "The Notice for calling a Statutory Meeting must be given at least 21 days before the meeting is held unless members holding not less than 95% of the paid-up capital and having the right to vote agree to a shorter notice".
- The Notice must clearly mention that it is for a Statutory Meeting.
- It must clearly state the time, date and place of the meeting. Statutory meeting can be called even on a holiday, at any reasonable hour, and at any place convenient to the company.
- The notice of the meeting must be sent to:
 - a. Every member of the company
 - b. The Legal representative of deceased members
 - c. The Official receiver/assignee,
 - d. The auditors of the company,
 - e. The public trustee in case the shares are held in trust.

Since each item in the Statutory Meeting constitutes a special business², an Explanatory Statement³ should be added for each item on the Agenda. The statutory report of the company and a copy of the notice should be sent to the members of the company. Also a copy of the report should be sent to the Registrar of the Companies.

Statutory Report

The Board of Directors are required to send to every member a Statutory Report.

- The Statutory Report should be certified as correct by at least two directors of the company, one of whom shall be the Managing Director, where there is only one in the company.
- The report must be certified as correct by the auditors of the company regarding the shares allotted and cash received in that regard.

Illustration:

The Registrar of the Companies on examining the statutory report filed by the M/s Dhanpat Rai & Sons Lt., finds that the report has been certified as correct, by all the directors of the company except the Managing Director. The registrar of companies refused to register the document on the ground that it has not been signed by the Managing Director of the company. The objection raised by the registrar is correct.

² Business that can only be transacted at a general meeting if its general nature has been specified in the notice convening the meeting.

³ A statement describing in detail the special business

Contents of the Statutory Report

- a. The total number of shares allotted-fully paid up and partly paid up; shares allotted for cash and consideration other than cash; **Shares allotted –**

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- b. **Cash received** – The total cash received by the company in respect of all allotments made;
- c. **Abstracts** – An abstract of receipts and payments up to a date within 7 days of the report, and balance of cash in hand;



Figure 6.3: Content of a Statutory Report

- d. Any commission or discount paid in issue of shares or debentures; **Commission -**
- e. **Details** - The names, addresses, and occupation of directors, auditors, manager and the secretary of the company;
- f. **Underwriting Contracts** – The extent to which any underwriting contract has not been carried out;
- g. **Arrears of calls** – The arrears due on calls from every director; and
- h. **Preliminary expenses** – An account of the preliminary expenses showing separately any commission or discount paid or to be paid on the issue or sale of shares.

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Example of a Statutory Report

FORM NO. 22

Registration No. of Company Nominal Capital Rs.
.....

THE COMPANIES ACT, 19567

Statutory report

[pursuant to section 165]

Name of company Limited

Statutory report of the certified and filed pursuant to section 165(5).

Date of notice for holding statutory meeting
.....

Date of meeting
.....

Place where the meeting is to be held
.....

Presented by
.....
.....

The board of directors submit this statutory report to the members in pursuance of section 165.

1. Shares allotted and cash received up to

No. of shares	Nominal value of each share	Cash received up to
(a) Allotted subject to payment thereof in cash.		
(i) Equity		
(ii) Redeemable preference shares.		
(iii) Preference shares other than redeemable preference shares.		
(b) Allotted as fully paid up otherwise than in cash and the consideration for which they have been allotted.		
(i) Equity		
(ii) Redeemable preference shares		
(iii) Preference shares other than redeemable preference shares.		
(c) Allotted as partly paid up to the extent of Rs. per share and the consideration for which they have been so allotted.		
(i) Equity		
(ii) Redeemable preference shares		
(iii) Preference shares other than redeemable preference shares		

2. Abstract of receipts and payments upto:--

Receipts Rs.	Payments Rs.
Shares	Preliminary expenses
Equity	Commission on issue or
Redeemable preference shares.	Sale of shares.....
Preference shares other than	Discount on issue or
redeemable preference shares.	Sale of shares.....
Advance payment for shares.	Capital expenditure
Debentures	Land
Loans	Building
Deposits	Plant
Other sources	Machinery.....
(to be specified)	Other items to be specified
	Balances.....
	In hand
	At banks
	At post Office
	Saving Bank
Total	Total

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It can be concluded from the above that the Statutory Report of the company gives a shareholder and other relevant people attached with the company the preliminary basic facts about the company after its incorporation.

Scope of the statutory meeting

Section 165 (7) allows members to discuss any matter related to the formation of the company or arising out of a Statutory Report, whether previous notice of that matter has been given or not, but no formal resolution can be passed regarding that decision unless 21 days notice has been given prior to the meeting.

Adjournment of the meeting [Section 165(8)]

The Statutory Meeting may get adjourned from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with provisions of the Companies Act whether before or after former meeting may be passed.

List of members [Section 165(6)]

The Board should place at the meeting a list showing details of names, addresses and occupations of the members of the company, number of shares held by them etc. This list should be kept open throughout the meeting is in progress.

Penalties [Section 165(9)]

If default is made in complying with any requirement of Section 165, every director or any other officer of the company who is in default shall be punishable with a fine which may extend to Rs.5000.

If the Statutory Meeting is not held within the stipulated time or it is not at all held, that also becomes a ground for winding up the company through court.



Figure 6.1: Fine upto Rs 5, 000/-

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6.1.2 Annual General Meeting (AGM) [Section 166]

Section 166 of the companies Act provides that “Every company, whether public or private, whether with share capital or unlimited, must hold a meeting of its members each year”. Since it is to be held annually it is known as an **Annual General Meeting**.

Case law 1

Meenakshi Mills Company Ltd. Vs. Asst. Registrar of Joint Stock of Companies -[A.I.R (1938) Mad 640]

In this case an Annual General Meeting of the company was called in December, 1934. The meeting was adjourned and held in March, 1935. The next meeting was held in February, 1936. The company was prosecuted for not holding any meeting of the company in 1935. It was contended on behalf of the company that there was a meeting in 1934, in 1935 and in 1936 and as such there was no default.

But the court held that the meeting of March, 1935 was not a different meeting from the one which began in December, 1934; it was the same meeting. Hence the company was held liable for not holding a meeting in 1935.

Importance of the meeting

The Annual General Meeting of the company provides the members with an opportunity to review working of the company and express their views on the working of the company. An AGM is called by the company majorly for the following four reasons:

- a) passing of the annual accounts
- b) declaration of the dividends



Figure 6.5: AGM

- c) election of directors in place of those retiring by rotation, and
- d) appointment and fixation of the remuneration of auditors etc

All other items of the agenda except those given above are considered as **special business**.

Other Statutory Provisions regarding the holding of the Annual General Meeting are as follows:

- a) Who can convene the meeting - the power to convene an AGM vests only with the Board of Directors. Not even the secretary of the company can convene this meeting without the authority of the board.

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Figure 6.6: Board of Directors

b) First AGM – A company must hold its first AGM within 18 months of incorporation. Not even the registrar of companies can extend the time limit available.

Illustration:

If Satyam Ltd Co. is incorporated on 1st December 2005, then it need not hold its first AGM in the year 2005, or in the year 2006, but it must hold its first AGM not later than 31st May 2007.

c) **Subsequent AGM** – An AGM must be held by the company each year within six months after the close of the financial year, but the interval between two AGM's should not be more than 15 months. The Registrar may, for any special reason, extend this time up to three months.

Illustration:

The accounting year of Uniprince Ltd ends on 30-6-2004 and if its AGM cannot be held by December, 2004, the Registrar of Companies can grant extension to Uniprince Ltd up to March 2005. In such a situation, there will be no violation of law if no AGM is held in year 2004.

Considering the importance of the AGM to the shareholders, the directors of the company must call the meeting even though **accounts are not ready** or company is not functioning, or the management of the entire controlled business of the company is vested in the hands of the Central Government. The correct decision on the part of the company would be to hold the meeting and then adjourn it to a suitable date for considering the accounts.

Illustration:

An adjourned meeting does not count as a separate meeting.

Illustration:

At the AGM held on 25th Sept. 2007 of Cosmos Ltd., the auditor is appointed to hold office up to the conclusion of next annual general meeting. Incidentally the next AGM is held on 20th September 2008 but that also stands adjourned without transacting any business. In such a situation the auditor appointed on 25th September 2007 of Cosmos Ltd. will continue to hold office till the conclusion of the meeting because the adjourned meeting is merely continuation of the original meeting.

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It is not enough that the two AGM's are held within 15 months of each other. It is imperative that no calendar year should pass without an annual general meeting.

Illustration:

If an AGM for Redar Ltd. is held in December 2005, then the next AGM for Redar Ltd. must be held latest by December 2006. If it is held in January 2007, it will not satisfy the provisions of the Act.

The Ministry of Corporate Affairs has clarified the time limit for holding of the AGM :-

- i. Six months from the close of the financial year;
- ii. Fifteen months from the previous AGM, or
- iii. By the last day of the next Calendar year, whichever is earlier.



Figure 6.7: Time Limit for holding a meeting

d) Day, Hour and Place of the Meeting- The meeting must be held

- i. On a day which is not a public holiday,
- ii. During business hours,
- iii. At the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Illustration:

ABC Company is registered in Bombay and it wishes to hold its fifth Annual General Meeting in Delhi. The company cannot hold the meeting in Delhi because its registered office is in Bombay and not in Delhi. By holding the meeting in Delhi it will be violating Section 166.

Adjourned meeting on a Public Holiday- Section 166(2) provides "Every Annual General Meeting shall be held on a day that is not a public holiday⁴." The Department of Company Affairs has made this as one of the mandatory requirements. The Department has further clarified that there is no contravention of Section 166(2) if an adjourned meeting, which was adjourned for the want of quorum, is held accidentally on a public holiday.

e) **Notice** – The company must give a notice of 21 clear days for the AGM to all the members of the company and its auditors. A shorter Notice may be held valid only if consent is accorded to it by all the members entitled to vote at the meeting. The Notice must specify the place and the day and hour designated for the meeting and must contain the business to be transacted thereat.

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The Notice must be given to

- i. The every member
- ii. Representative of a deceased member or assignee of an insolvent member,
- iii. The Auditor or Auditors, and
- iv. The Public Trustee in respect of the holding company.

Illustration:

Casio Ltd. decided to have its AGM on 31st October but it failed to send notice of the AGM to some thirty shareholders of the company out of six hundred shareholders. Those thirty shareholders said the meeting held in their absence was invalid and they complained to the tribunal. The tribunal said whether Casio Ltd. was at fault or not will be decided after it is proved whether the failure to send the notice was deliberate or an accidental omission. In case of deliberate omission, notice not sent to even a single shareholder invalidates meeting but if it is an accidental omission than it will not invalidate the proceedings of the meeting.

⁴ Public Holiday means a holiday as per Negotiable Instruments Act ,1881

f) Consequences of default - Section 167 states "If default is made in holding the meeting, the Company Law Board may, on application of any member of the company, call or direct the calling of the meeting."

Illustration:

AB Ltd. could not hold its AGM within 18 months from the date of incorporation. The Board Of Directors of the AB Ltd company through a resolution decided not to call the first AGM on the grounds that most of its directors were outside India on a business trip and since company was still in the gestation period it will cost company heavily to call a meeting. In this case the decision of the board of AB Ltd. is not justified as the company must hold AGM within 18 months of its incorporation. The members of the company can as per Section 167 apply to the Company Law Board to convene an AGM.

Penalties

If the company fails to hold the meeting either originally or when directed to do so by the Company Law Board, then the company and every officer of the company who is in default shall be punishable with fine which may extend up to Rs 50,000; and in case the default continues, a further fine of Rs 2500 per day may be levied when the default continues.

ILLUSTRATION

NOTICE OF ANNUAL GENERAL MEETING

**A draft Notice for the Annual General Meeting of
MON Ltd
Regd. Office at
Greater Kailash, New Delhi**

Notice is hereby given that the Eighth Annual General Meeting of the Mon Ltd. will be held on-20th September 2010 at 11.00 A.M at its registered office mentioned above to transact the following business:

Ordinary Business

1. To receive, consider and adopt the Directors and Auditors' Reports and audited Profit & Loss Account for the year ended 31st March 2010 and the Balance Sheet as at that

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date.

2. To consider and declare dividend.

3. To appoint a director in place of Mr. Bat who retires, and being eligible, offers himself for re-appointment.

4. To appoint auditors to hold office from the conclusion of the next annual general meeting of the company, and to fix their remuneration.

Special Business

5. To consider and pass with or without any changes the following resolution: "RESOLVED that consent of the company be and is hereby accorded under the provisions of the Section 293(1)(d) of the companies Act, to the Board of Directors of the company for the borrowing from time to time all sums of money as they deem fit for the purposes of business of the company, apart from temporary loans obtained from the company bankers in the routine functioning of the company ,exceeding the paid –up capital of the company and its free reserves ,provided that the total amount up to which the moneys may be borrowed by the board shall not exceed Rs 10 crores at any point in time."

By Order of the Board

MON Ltd.,

Secretary

Date:

Regd. Office:

Notes:

1. Explanatory statement pursuant to Section 173(2) of the companies Act is annexed.

2. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and proxy need not be member. Proxies must be received 48 hours in advance so that they can be registered.

3. The register of members of company shall remain closed from 15-10-2010 to 18-10-2010 (both days inclusive) for the purpose of annual dividend.

4. Members are requested to notify immediately any change in address to the company.

5. Dividend, when declared, will be paid on and from the day of 20-09-2010 to those shareholders, whose names stand on the Register of Members as on 20TH SEPTEMBER 2010.

6. members/proxies are requested to bring their attendance slip duly filled in for the meeting.

7. Any query relating to accounts must be sent to the company's registered office at least seven days before the date of the meeting.

8. Please inform your Income Tax PAN Number or GIR Number, for the purpose of tax deduction at source.

9. If quorum is not present within half an hour, the meeting will be held at the same place on same day after half an hour of the appointed time and members present will constitute the quorum.

Annexure

EXPLANATORY STATEMENT

Statement pursuant to Section 173 of the companies Act, in respect of Special Business set out in Notice

Item no. 5.

The Company needs more funds including those to be raised from borrowings to modernize its plant and machinery which is more than 15 years old. As the total loans to be raised are likely to exceed what the company's paid up capital and free reserves

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are, the consent of the share holders is required under the provisions of Section 293 (1)(d) of the companies Act, by passing the resolution with or without modification. The actual amount of borrowings by the company shall be determined with reference to its requirements from time to time but shall not exceed in any case Rs 10 crores. None of the Directors of the company are interested in the resolution except as members of the company.

By Order of the Board of Directors

MON Ltd.,
Secretary
Date:16-08- 2010
Regd.Office:

6.1.3 Extraordinary General Meeting (EGM)

Regulation 47 of Table A provides "That all general meetings, other than the statutory and annual general meetings are called **Extraordinary General Meetings** and business transacted at such meetings is a special business."

The EGM is also called a meeting held between two AGM's for discussing matters which cannot be postponed till the next AGM.



Figure 6.8: EGM

Provisions regarding the convening of an EGM

a) By the Directors: - The directors collectively as a Board can call an EGM by passing an ordinary resolution at a Board of Directors meeting, which is duly convened and properly constituted. The board of directors must give 21 clear days notice before holding an EGM. A shorter notice however may be valid, if holders of 95 per cent or more voting rights agree to it.

b) By the Directors on the Requisition:- Section 169 provides "The board of directors must convene a General Meeting upon requisition signed by members holding at least 1/10th of the paid up capital, in case companies have share capital; and by members holding at least 1/10th of the voting power in other cases."

Case law 2

Cricket Club of India vs. Madhav L Apte - [(1975) 45 Comp Cas 574 (Bom HC)]

In this case the Cricket Club of India received a requisition from its members represented by the plaintiff Madhav L Apte to make some alteration in the articles. The Board of the Cricket Club was of the view that the requisition made by the members was

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illegal and therefore decided not to call the extra ordinary general meeting and sued the members for giving an illegal requisition.

It was held that the meeting must be called and it is not for the Board of Directors to decide the legality or illegality of the requisition.

The directors should, within 21 days from the date of deposit of the requisition, move to call such meeting and the meeting should actually be held within 45 days from the date of requisition.

Illustration:

The holders of 15 percent of paid-up capital of Siddharth public limited gave a requisition at the company's registered office for an extraordinary general meeting. The requisition was given on 31st July 2005. The board of directors must call a meeting by 21st August 2005. The said meeting must be held latest by 14th September 2005 (i.e. within 45 days)

Requisitionists are not bound to disclose the reasons for the resolution they propose to move at the meeting. No business other than the business for which the meeting has been convened can be transacted at the requisition meeting.

Illustration:

A requisition for EGM of the Swastik Ltd. is to be held on 31st October. The notice of this meeting is sent to all the members. But the notice does not state the business to be transacted at the meeting. After the meeting all the businesses transacted at the meeting will be held invalid, even though it is a requisition meeting because the notice does not disclose the details of purpose for which a meeting has been called.

6.1.4 Class Meeting (Section 106)

Section 106 provides "Where the share capital of the company consists of different classes of shares, meetings of different classes of shareholders may have to be called whenever the company wants to make any variation in the rights attached to shares of any particular class."

Meetings where only a particular class of shareholders come for any particular purpose or otherwise are **class meetings**.

Illustration:

If the rate of preference dividend for Summera Ltd is to be reduced, a meeting of only the preference shareholders of Summera Ltd will have to be called to change the rate of the same.

Further if any right attached to a particular class of shares is to be curtailed, then written consent of 3/4th of the holders of that particular class of shares must be obtained. Class meeting is an exception to the general rule that there must be at least two people to constitute a meeting because a class of shares may be held by **one person also**.

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6.1.5 Board Meeting

The different types of Board meetings are discussed below:

a) Meeting of the Board of Directors

Section 285 provides that "A company must hold the meeting of its Board of Directors at least once in every three calendar months and there should be at least four meetings every year." This means legally there should be four board meetings in a year.



Figure 6.10: Meeting of BOD

However the Central Government may exempt any specified class of companies from the above provisions, if they do not have enough work to justify expenditure on quarterly meetings of the board.

Illustration:

A company held its Board Meeting on 1st January 2008 and the next Board Meeting on 2nd April 2008. The auditors of the company were of the view that the company had violated Section 285. This is not true because the first board meeting of the company was held in the first quarter of 2008 and second was duly held in the second quarter.

b) Meetings of the Committee of Directors

Regulation 77 of Table A provides that "The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit." **Committees** are formed by the board to take care of some regular work and people with related work experience are placed in these committees.

The committee so formed shall consist of a single director and people in these committees elect their Chairman. The committees may be either standing or adhoc committees. These committees are formed to do the routine work of the company.

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6.1.6 Other Kinds of Meetings

Given below are some other types of meetings:

a) Meetings of Debenture-Holders

These meetings are called from time to time where the interests of the debenture holders are involved at the time of the reconstruction, reorganization, amalgamation or winding up of the company. Meetings of the debenture holders may also be held from time to time in pursuance of the terms of debenture trust deed. These are meetings for the interests of debenture holders only.



Figure 6.11: Types of Meetings

b) Meetings of Creditors

Section 391 provides that "These meetings be called when the company proposes to make a scheme or arrangement with the creditors." Companies, like individuals, may sometimes find it necessary to compromise or make some arrangement with their creditors. This Section not only gives powers to the company to compromise with the creditors but also lay down the procedure for doing so.

c) Meetings of the Creditors and the Contributories on winding up

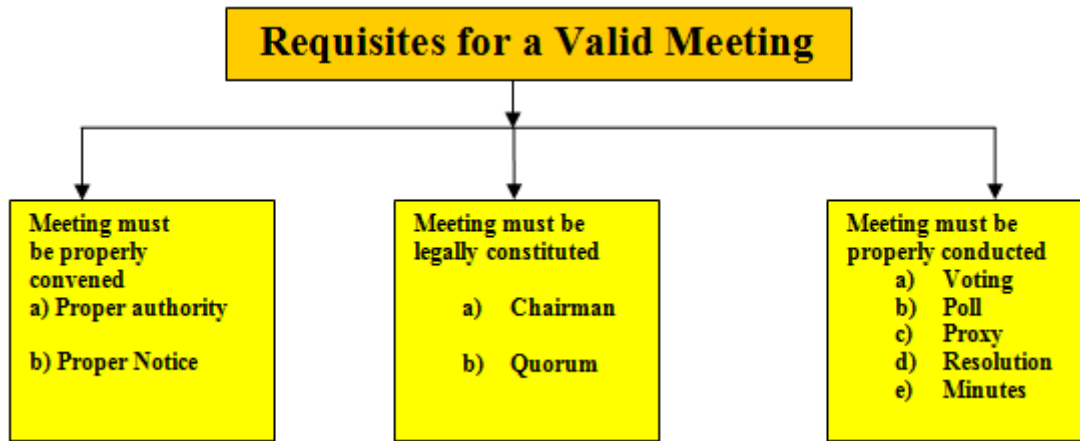
These meetings are held when the company has gone into liquidation. These meetings are held to ascertain the total amount owed by the company to its creditors and also to appoint the liquidators or a **committee of inspection**. The term "**Contributory**" includes every person who is liable to contribute to the assets of the company in winding up.

6.2 Requisites for a Valid Meeting

Every meeting, in order to be valid, must be duly convened, properly constituted and conducted. Section 171 to Section 186 of the Companies Act 1956 contain provisions for the holding of General Meetings of a company which are to be followed by every public company. Private companies can follow the same provisions or, if they like, they can also make their own provisions for holding the meetings.

A meeting to be valid must satisfy the following essentials/requisites:-

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6.2.1 Meeting to be properly convened must have the following essentials:

6.2.1.1 Proper Authority

It is the first essential of a valid meeting.

● **Board of Directors:** Ordinarily, the Articles of Association of the company empower the Board of Directors to convene a General Meeting. The Directors may call a meeting of the Shareholders by passing a resolution at a meeting of the board.

The resolution to call a general meeting must be passed at a valid board meeting, otherwise the notice calling the general meeting with itself become invalid and the proceedings of the meeting shall not be effective.

By Directors on Requisition of the Shareholders:-

Where a requisition is given at the registered office of a company, the Directors should within 21 days, move to call a meeting and the meeting should be held within 45 days of requisition.

If the Directors fail to do so, the requisitionists may themselves proceed to call the meeting within three months of the date of requisition. This is applicable in case of extra ordinary general meeting.

Illustration:

A requisition to call an EGM was deposited by the requisite number of members on 31st July, 2008 of Saksham Ltd. In case of default by the BOD of Saksham Ltd. to call a meeting, the same can be called by the requisitionists themselves and be held latest by 31st October, 2008 at the latest (i.e. within 3 months from the date of the deposit of the requisition).

By the Company Law Board (CLB):-

If for any reason, it is impracticable to call meeting of the company, other than AGM (Annual General Meeting) or to hold or conduct a meeting of the company, the Company Law Board may, order a meeting to be called and conducted as CLB thinks fit. either:-

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Figure 6.12: Meeting called by CLB

- (i) On its own motion, or
- (ii) On the application of any director of the company, or
- (iii) If any member of the company entitled to vote at the meeting applies for it.

A meeting so called and conducted shall be deemed to be a meeting of the company duly called and conducted i.e. **it is a valid meeting.**

Illustration:

Order was made by the CLB in favour of Krishna Ltd. to hold a meeting. When it was found that there were only two directors in Krishna Ltd. and one of the directors was not attending the meeting and there was a deadlock of the affairs of the company matters, CLB further ordered that even one member present in person at the meeting shall be a valid quorum. The meeting of Krishna Ltd. was held on 13th September 2009 and only one member was present. As per the directives of CLB the meeting held was a valid meeting.

6.2.1.2 Proper Notice

Section 171 states –“Notice is an advance intimation of the meeting so as to give the person receiving it an opportunity to prepare himself / herself for it” i.e. **Notice states the purpose for which the members are meeting.** However, not every notice is a valid one.

A valid notice should contain the following essentials:-

● Notice of the company should be given to whom ?:-

Section 172 (2) states “Notice of the meeting should be sent to

- i. The shareholder (equity & preference) either personally or by post,
- ii. The auditors of the company,
- iii. All directors of the company,
- iv. The legal representative of a deceased member and
- v. Whosoever is liable to attend.”



Figure 6.13: Notice

Deliberate omission to deliver notice to even a single member would result in making a meeting invalid, but accidental error does not make meeting invalid. If the shares are jointly held then whose name appears first in register have to be sent the notice.

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Illustration:

(Intentional Omission)

Ravi, a director in a company gave in writing to the company that notice for any general meeting and the Board of Directors meeting be sent to him at his registered address in India only by registered mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, under certificate of posting. Ravi could not attend the meeting as he did not receive the notice and the proceedings thereof on the ground of improper notice. In this case contention of Ravi shall be tenable, for the reason that the notice was not properly served and meetings held shall be invalid. In case Ravi would have been outside India at the time when notice was delivered then the proceedings of the meeting shall not be invalid as company is not liable to send notice outside India.

Illustration:

(Unintentional Omission)

The secretary of the GLL Ltd while sending out to the members the notices of a special resolution to be proposed at the meeting unintentionally omits to send the notice to one member. Hence in present case, the resolution is valid and binding resolution since omission by the secretary of GMR Ltd is unintentional.

● Length of the notice (Time period of the notice) :-

Section 171 states that "The notice should be in writing and must be given at least 21 days before the date of the meeting." In calculating 21 days, 48 hours from the date of posting has to be excluded and also the day on which notice is served and the day of the meeting have also to be excluded.



Figure 6.14: Time Period for the Notice

The notice of a general meeting must be sent 25 days and not 21 days before the date of the meeting in case it is being sent through **post**.

However, the AGM may be called by giving a shorter notice, if it is consented by all the members entitled to vote.

Illustration:

Bat Ltd. issued a notice for holding of its Annual General Meeting on 7th November, 2008 with the consent of shareholders holding 96% holding. The notice was posted to the members on 16.10.2008. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 1956 with regard to the period of notice and as such the meeting was not validly called. Some members alleged that the notice was falling short by 2 days and that 21 clear days notice had not been served on them. In this case a shorter notice is valid if consent of all members entitled to vote give their consent.

● Contents of the Notice (what should be written in notice):-

Meeting

“Every notice of a meeting must specify the **place and the day and the hour** of the meeting and shall contain a statement of business to be transacted at the meeting [Section 172(1)]”.

The notice must state what **kind of meeting** it is i.e. whether it is AGM, EGM etc. It must accompany an **Agenda**. If a special business is to be transacted then an **Explanatory Statement** should also be attached.

Case law 3

Kaye vs. Croydon Tramways Co. - [(1898) 1 Ch.358.]

In this case the Croydon Tramways Co gave a notice of a meeting to its members stating that the object of the meeting is to enter into an agreement for the sale of the company's undertaking to another company. The notice did not disclose that the directors were personally interested in it, as a substantial part of the sale proceeds was to be paid to them as compensation for loss of office. Kaye, a member of the company sued it for non-disclosure of facts in the notice.

It was held, that the notice did not disclose all the facts and therefore was not adequate.

The notice of the meeting must state that a member is allowed to appoint a proxy where allowed as per the Articles and further that a **proxy** need not be a member [Section 176(2)].

A **fresh notice** need not be given for holding an adjourned meeting because such a meeting is merely a continuation of the original meeting. The meeting should be held at the same time next week, same day, until and unless the chairman decides otherwise. However if a meeting is adjourned without fixing any new date a fresh notice needs to be sent.

Documents to accompany notice

1. For an AGM – audited accounts, balance sheet, directors and auditors report, proxy form etc.
2. For a statutory meeting- statutory report, proxy form etc.
3. For an EGM- explanatory statement, proxy form etc.

6.2.2. Meeting to be legally constituted

This is the second essential requisite of a valid meeting constituting of following elements:

Meeting

6.2.2.1 Chairman

The Chairman is elected to see that the meeting is properly convened and duly constituted. The successful conduct of the meeting is dependent on the decision making ability of the chairman. In a problematic situation or in a situation of equal division it is the chairman's decision which is finally accepted as he / she is the chief authority.



Figure 6.15: Electing a chairman

Election of the Chairman

The appointment of the Chairman is generally provided for in the Articles. As Section 175(1) states "Unless the articles otherwise provide the members present in person at the meeting shall elect one of themselves to be the chairman thereof on the show of hands."

Further regulation 51 and 52 of Table A provide that "If there is no Chairman or he is not present within 15 minutes after the appointed time of the meeting or he is unwilling to Act as the Chairman of the meeting, then the directors present shall elect one among themselves to be Chairman or if no Director is present within 15 minutes after the appointed time of the meeting the members present shall choose one among themselves to be the Chairman."

Illustration:

Amitabh who is not a member of Enhance Ltd. is appointed as a director of the company. Later on he becomes Chairman of the company. Zubeda, a member of the company objects to his chairmanship on the ground that he is not a member of the company. The objection raised by Zubeda is unsustainable because a director need not be a member of the company (unless articles otherwise provide), a non-member may become a chairman.

Duties, powers etc of the Chairman

Chairman is prima facie authority to decide all incidental questions which arise in the meeting. He must ensure that the proceedings at the meeting are conducted according to rules and that order and decorum of the meeting are maintained.

Though Chairman has power to adjourn the meeting, but not always he can adjourn a meeting. When there is absence of quorum or there is disorder, or If Articles so direct chairman can adjourn the meeting. But if the Chairman wrongly adjourns the meeting a new Chairman may be appointed.

Illustration:

Due to the unruly behavior of some of the members during a meeting, the Chairman of the meeting proposes to adjourn the meeting. Some members opposed the adjournment. In the given situation the Chairman can adjourn the meeting for a short period to restore the order, but he cannot adjourn the meeting to an undecided date when the Quorum is present.

Chairman cannot change the order of the matters to be discussed in the meeting without consent of the members present at the meeting i.e. he cannot change agenda. He also cannot without any reason stop discussion on any topic mentioned in agenda.

Case law 4

Pik Securities vs. United Western Bank Ltd - [A.I.R. (1955) M.B.166.]

Meeting

In this case Pik Securities was a petitioner and United Western Bank a respondent. According to the petitioners, while the first three resolutions in the meeting were passed unanimously by show of hands, the shareholders protested against the resolution relating to the right issue and demanded a poll. The chairman, however, announced the withdrawal of this item and abruptly concluded the meeting and left.

It was held that the chairman of the meeting on his own cannot withdraw an item already on the agenda without the permission of the members. Hence the business remains un-transacted and the members can elect a new chairman and continue with the meeting.

Chairman can include and exclude anything from the minutes of the meeting.

Illustration:

The Minutes of the meeting of WET Ltd contain fair and correct summary of the proceedings of the meeting. The Chairman directs expulsion of certain matters from the Minutes to which the shareholders oppose. In this case the decision of the Chairman shall prevail as he has the authority to include or exclude anything from Minutes.

If a Poll is demanded, the Chairman has to see that the poll is held according to the provisions of the Act. Again, if the Articles so provide the Chairman can cast a second vote to break a tie, in case of equality of votes.

6.2.2.2 Quorum

Section 174 defines "**Quorum as the minimum number of members who must be personally present at a meeting for the business of the meeting to be validly transacted**" i.e. When no Quorum is present at the meeting, the meeting is said not to be legally constituted and hence the business transacted or resolution passed at the meeting becomes invalid.

Illustration:

ABC Company Ltd. had only 50 preference shareholders. The company for amending the terms of these shares called a meeting of its preference shareholders. Mr. Banarasi Lal, was the only member present at the meeting. He, however, held proxies for all other shareholders. He took the chair and conducted the meeting and passed the resolution. The meeting and the resolution were invalid because there was only one shareholder present and he was not holding all the shares, so there was no quorum.

Unless the Articles provide for larger quorum the minimum quorum required to be present at a general meeting is, five members present personally in the case of a public company and two members present in case of a private company. The Articles of a company cannot provide for a quorum lesser than this.



Figure 6.16: Minimum Quorum for a Public Company

Section 174 (3) states , "If within half an hour from the time appointed for holding a meeting of the company, a Quorum is not present in person at the meeting then-

(i) If the meeting has been called upon the requisition of the members then it will stand dissolved.

Meeting

(ii) In any other case, it will stand adjourned to the same time and place, or to such other day and at such other time and place as the Board of Directors may determine”.

In case the Quorum is not present at the adjourned meeting also within half an hour from the time appointed for holding the meeting, the members present shall be the Quorum.

Illustration:

A meeting of Star Ltd. was properly convened and subsequently adjourned by the Chairman for lack of quorum. The Chairman of the meeting did not give fresh notice of the adjourned meeting and the meeting was held at the same time next week and at the same place. As per the provisions of section 174(3) the meeting held was valid.

Unlike the rule in the United Kingdom, in India it is not always a requirement that the quorum be present throughout the meeting. However, the quorum should be there when the business for which meeting has been called is being discussed.

Some general points about quorum:-

- Proxy is not to be counted for the purpose of quorum.
- Joint holders of shares are treated as one member for the purposes of quorum.
- Where a company is a member of another company or where the President or Governor holds shares in a company their duly appointed representative is deemed to be personally present and will be counted for the purpose of the quorum.
- Preference Shareholders present in the meeting are not to be counted for the purpose of quorum except – where the proposed business includes any item directly affecting Preference Shareholders.

Quorum for a Board Meeting

Section 287(2) has fixed the Quorum of the board meeting at 1/3 rd of its total strength (any fraction to be rounded off as one) or two directors whichever is higher.

The Quorum should consist of disinterested directors only. However, where at any time the number of interested Directors exceeds or is equal to 2/3 rd of the total strength, the number of remaining Directors present at the meeting being not less than two shall be the Quorum during such time.

One – man meeting or Can an individual validly constitute a meeting? If one person holds proxies for all the members he will not constitute a valid meeting.

However in the following cases **one person** can form the quorum for a General Meeting:-



Figure 6.17: One-Man Meeting

(i) If all the shares of a particular class are held by one person.

(ii) If there is only one Creditor or Debenture Holder ,he/ she will constitute a quorum, for the Creditor or the Debenture Holder in meeting.

(iii) Company Law Board may issue directions under Section 167(AGM) or Section 167(EGM) that one member, present in person or by proxy shall constitute a quorum or not.

Meeting

6.2.3 Meeting must be properly conducted

Meeting to be properly conducted must have the following essentials: -

This is the third requisite of a valid meeting. It means that

- Proper rules for ascertaining the sense of the meeting are observed,
- The rules for discussion and order in debate must be observed.
- It also includes that proceeding of the meeting to be recorded properly.
- It includes a) Voting b) Poll c) Proxy d) Resolution e) Minutes.

6.2.3.1 Voting

It is not possible in a meeting that all members present will always agree on a matter in the same manner i.e. in the absence of this unanimity the role of the Chairman broadly comes in. After a **“Proposed Resolution”** or a **“Motion”** has been discussed in the meeting by the members it is put to vote for ascertaining the sense of the house. This is where the role of voting comes in.

The word **“Vote”** means an expression of wish or **“opinion”** in an authorized formal way for or against any proposal.

Voting if called for, can be carried out **by the show of hands**. Section 177 provides “At any General Meeting when a motion is put to vote, it shall be decided on the show of hands unless a poll is demanded.”



Figure 6.18: Voting by Show of Hands

The steps in this method are:

- i. The Chairman requests the members present in the meeting who are in favour of the resolution to raise their right hand
- ii. That number is noted,
- iii. The Chairman asks all those members who are against to do likewise.
- iv. The Chairman then declares the result indicating whether the proposal is lost or accepted.

In this particular method, every member has one vote and proxies are not allowed, unless expressly allowed by the Articles of the company.

Further, where a company is member of another company, or where the President or the Governor holds shares in a company, their duly appointed representatives are deemed to be personally present and can vote on show of hands [Section 187(2) and 187 A]

Problems with Voting are

- It does not take into account opinion of the individual shareholders.

Meeting

- Votes of those members who are absent from the meeting but have appointed proxies to vote for them are also not counted under this method.

Who can demand a poll [Section 179]?

A Poll may be ordered by the Chairman on his own motion. But Chairman will be bound to take a poll if demanded by any of the following:-

a) In case of a **public company having share capital**, by any member or members present in person, or by proxy, holding at least 1/10 of the total voting power in respect of resolution or having shares on which an aggregate sum of not less than fifty thousand rupees has been paid up

b) In case of a **private company** by one member having the right to vote on the resolution, present in person or by proxy if not more than seven such members are personally present and by two such members or their proxies, if more than seven such member are personally present.

c) In case of **any other company** by any member or members present in person or by the person or persons who made the demand.

The demand for a poll can be **withdrawn** at any time before the Poll takes place by the person or persons who made the demand.

Time of taking poll

"A poll demanded on question of adjournment, or the appointment of a Chairman must be taken forthwith this means on some topics poll has to taken right away. In any other case the poll must be taken within **48 hours** of the demand was made"[Section 180].

Conduct and Result of Poll

The Chairman of the meeting has the power to regulate the manner in which a poll shall be taken. The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken [Section 185]. The result of the poll shall be deemed to be the decision of the meeting on the resolution on which poll was taken.

The declaration of the result by the Chairman and an entry to that effect in Minutes Books of the company is conclusive and final [Section 195].

6.2.3.3 Proxy

Any member entitled to attend and vote in a meeting, may appoint another person to attend and vote on his behalf. The person so appointed is called a "**Proxy**".

In the judgment made by **Lord Hansworth in Cousins vs. International Brick Co.Ltd.,(1931) 2 Ch.90.**, "A proxy is a person representative of a shareholder at a meeting of the company who may be described as his / her agent to carry out which the shareholder has himself decided upon."

Meeting

Thus the term Proxy means two things:-

- a) The instrument or letter of authority whereby a member of the company appoints another person to represent him / her at the meeting and vote on his / her behalf, and
- b) The **agent** or the person appointed to represent and vote on behalf of the member at the meeting.

A proxy, therefore has to Act according to the wishes of the shareholder, he cannot do otherwise.

Section 176 provides that "Every member of a company shall be entitled to appoint another person as his / her proxy to attend and vote instead of himself / herself." **A proxy need not be a member of the company.**

However unless the Articles otherwise provide:-

- A member of a company having no share capital cannot appoint a proxy.
- A member of a private company cannot appoint more than one proxy to attend on the s occasion but a member of a public company can appoint more than one proxy i.e different class of shares he can appoint different proxies.
- For each meeting a separate proxy is required. Unless the Articles otherwise pro proxies deposited in due time before original meeting are valid also for the adjou meeting. If Articles allow for lodgment of fresh proxy then members have to lodge a f proxy.
- Every notice of a company calling a meeting ,which has share capital or Articles that prc for appointment of proxy , there shall appear a statement that a member entitled to at and vote is entitled to appoint a proxy and that every proxy need not be a member of company. If default is made by the officer he shall be fined with Rs 5000.
- Appointment of a proxy must be made by a written instrument signed by the appointe his / her duly authorized attorney [Section 176(5)].

AN EXAMPLE OF A PROXY FORM

BE IT KNOWN, that I, **Mohit Sharma**, the undersigned Shareholder of Reliance Ltd., a Pvt Ltd. corporation, hereby constitute and appoint Sham Sunder as my true and lawful attorney and agent for me and in my name, place and stead, to vote as my proxy at the Meeting of the Shareholders of the said corporation, to be held on **13th April 2009** or any adjournment thereof, for the transaction of any business which may legally come before the meeting, and for me and in my name, to act as fully as I could do if personally present; and I herewith revoke any other proxy heretofore given.

WITNESS my hand and seal this **10** day of **March**, **2009**

Signed: **Mohit Sharma**

- In case of joint holders of shares the proxy of a member whose name appears first in order in the register of members, will be valid.

The instrument of proxy has to be in the prescribed form set out in Schedule IX. Section 176(6) provides that "An instrument appointing a proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the Articles."

Meeting

The instrument appointing a proxy must be deposited with the company atleast 48 hours before the meeting. [Section 176(3)].

Illustration:

An Annual General Meeting of Smart Ltd. was scheduled to be held on 15.12.2003. Mr. Ashok, a shareholder, issued two proxies: Pankaj and Yakub. The proxy in favour of Yakub was lodged on 12.12.2003 and the one in favour of Pankaj was lodged on 15.12.2003. The company rejected the proxy in favour of Mr.Pankaj as it was deposited on 15.12.2003, which was not in time (i.e. 48 hours) and accepted the proxy for Yakub as it was lodged on 12.12.2003, which was well in time.

Rights of a Proxy

Section 176(1) provides that "A proxy is not entitled to speak in meeting and can vote only on a poll." Unless the Articles otherwise provide i.e. proxy cannot be part of discussion however, he may demand a poll. **The relationship between proxy and shareholder is that of principal and agent**

Inspection of Proxies

A member entitled to vote can inspect the proxy forms deposited if a Notice of 3 days is given to the company. However he may inspect proxies lodged with the company during (within) 24 hours (within business hours) before the time fixed for the meeting and till the conclusion of the meeting.



Figure 6.20: Inspection of Proxies

Invitation to members prohibited

No invitation to appoint any person as proxy shall be sent at the expense of the company and if any such invitation is sent, then it is an offence which is liable for a fine to the extent of Rs 10,000.

Revocation of Proxy

- A proxy can be revoked by intimating the company, at any time before it is acted upon.
- Death or Insanity of the principal also revokes the authority of the proxy but proper intimation to the company is necessary.
- A member can prevent proxy from exercising the right to vote by himself / herself attending and voting at the meeting.

Illustration:

Sunder a shareholder of Vinni Ltd. appointed Bharat as his proxy to attend the meeting of the company to be held on 5th May. Just before the meeting Sunder himself attended the meeting and casted his vote. As both Sunder and his proxy casted their votes in the meeting, the vote casted by Sunder stands valid and the one casted by his proxy stands revoked.

Position of representatives of companies and government

Meeting

Where a company is a member or where the President or the Governor holds shares in a company, their duly appointed representatives shall be deemed to be personally present and shall enjoy all the rights of a member. **The representative is not a proxy.** He / she can take part in discussions, vote by show of hands, and demand a poll. He / she may appoint a proxy to attend and vote at the meeting instead of himself [Section 187(2) and 187-A]

Illustration:

The Articles of Association of Yemen Ltd. require the personal presence of at least 7 members to constitute a quorum in a general meeting. The following persons were present in the Extraordinary General Meeting to consider the appointment of the Managing Director: a) Aman, the representative of the Governor of Madhya Pradesh b) Bharat and Catty, the shareholders of preference shares, c) Diwakar representing Yemen Ltd. and Farhan Ltd d) E, F, G and H as proxies of shareholders.

In this case the requirement of the quorum is not fulfilled because a) Aman will be included for the purpose of quorum b) Bharat and Catty have to be excluded for the purpose of the quorum because they represent the preference shares and the agenda is for appointing the managing director therefore they will have no voting rights c) Diwakar will have two votes for the purpose of quorum as he represents two companies d) E,F,G,H are not included as they are proxies. The quorum is not complete as there are only three members present and for the quorum to complete Yemen Ltd. needs at least 7 members. Hence the quorum is falling short of four members.

6.2.3.4 Resolution

The word Resolution as such has not been defined in the Companies Act, however the method of transacting business at any meeting is that each matter is discussed and debated and finally put to vote, whereupon, if it is carried by the requisite majority, then it becomes a Resolution of the meeting on that particular matter. **Hence it may be defined as " The formal decision of a meeting on any motion placed before it or a proposal which is passed and accepted by the members in a meeting."**



Figure 6.21: Resolution

The Companies Act recognizes three types of resolutions:-

- a. Ordinary Resolution [Section 189(1)]
- b. Special Resolution [Section 189(2)]
- c. Resolutions requiring special notice [Section 190]

A) ORDINARY RESOLUTION [Section 189 (1)]

"An Ordinary Resolution is one which requires a simple majority, that is, votes cast in favour should exceed votes cast against the resolution." The votes may be casted by the members either present in person or by proxy where proxy is allowed. Votes for and votes against the resolution are both to be counted and the neutral votes are to be ignored.



Figure 6.22: Ordinary Resolution

All matters as per Company's Act which are not to be passed by Special Resolution are to be passed by an Ordinary Resolution.

Usually following matters are considered for Ordinary Resolution:-

Meeting

- a. Issue of Shares at a Discount [Section 79],
- b. Consideration of Directors' report,
- c. Election of Directors [Section 225],
- d. The increase, consolidation, conversion or sub-division of the share capital and the cancellation of unissued shares,
- e. Declaration of dividends,
- f. Appointment of auditors and fixing their remuneration, **require an ordinary resolution** [Section 224],
- g. Adoption of Statutory Report [Section 165],
- h. Adoption of Annual Accounts [Section 210],
- i. Variation in the number of Directors of the company within the limits fixed by the Articles [Section 258]
- j. Issue of Bonus Shares in accordance with the provisions of the Articles, and
- k. Authorizing voluntary winding up under special circumstances [Section 484].

However there are certain items of special business, which require an Ordinary Resolution such as:-

- a. Appointment of Sole Selling Agent [Section 294] ,
- b. Removal of Director before the expiry of his / her tenure. It also requires a Notice of 14 days to be given to the company [Section 284] ,
- c. Appointment of Director in place of the one removed [Section 284], and
- d. Sale of whole or part of the undertaking [Section 293].

For example

An Ordinary Resolution regarding Declaration of Dividend

"RESOLVED that out of the current profits at the rate of Rs4 Per equity share in the company for the year ended 31st March 2008 as recommended by board be and is hereby declared and that the same be paid after deduction of tax at source to those shareholders whose names appear in the company's register of members on 31st March 2008"

An Ordinary Resolution usually does not require filing with the Registrar. However, a copy of the Ordinary Resolution conferring powers upon the Directors under Section 293 must be filed with the Registrar within 30 days of the date of passing of the resolution.

B) SPECIAL RESOLUTION

Section 189(2) of the Companies Act provides that "A Resolution shall be a Special Resolution when:-

- a. The intention to propose the resolution as a Special Resolution has been duly specified in the notice calling the general meeting or other intimation given to members
- b. The notice required under Companies Act requires at least 21 days

- c. The number of votes cast in favour of the resolution must be three times more than the numbers cast against it" This is a resolution passed by a majority of at least 75% of

Figure 6.23

Meeting

votes of members present in person or by proxy and those absenting or remaining neutral and votes cancelled are not counted.

Illustration:

At a general meeting of Fisher's Ltd. a matter was to be passed by a special resolution. Out of 20 members of the company 10 voted in favour of the resolution, 3 against the resolution and 7 abstained. The Chairman declared the result as 'matter is passed' because votes cast in favour i.e 10 were three times of the votes cast against it i.e 3.

An **Explanatory Statement** setting out all material facts concerning the subject matter of the special resolution, including in particular the nature of interest, if any, therein of every director and manager, if any, shall be annexed to the notice of the meeting. It describes special resolution in detail.

Illustration:

Fixit Ltd. served a notice of General Meeting to its members. The notice stated that a special resolution will be required in the meeting to increase the share capital of the company. Shyam a shareholder complained that the amount of the proposed increase was not mentioned in the notice. Section 173 requires a company to annex an explanatory statement with full details to every notice for a meeting of the company in which some special business is to be transacted. Thus, the objection of Shyam was valid.

Besides the purposes mentioned by the Articles, the Companies Act requires a Special Resolution to be passed in following matters:-

- a. To alter Memorandum or Articles of the Company [Section 17 and Section 31],
- b. For buy back of shares [Section 77 A],
- c. To issue sweat equity shares [Section 79 A],
- d. Authorising the offer of right shares to non-members [Section 81],
- e. Reduction of share capital [Section 100],
- f. Authorising the voluntary winding up of the company [Section 484],
- g. Creation of reserve capital [Section 99],
- h. Authorising payment of interest out of the capital [Section 208],
- i. To commence a new business [Section 149],
- j. Removal of registered office outside the local limits of the city, town or village in which it is situated [Section 146], and
- k. To authorize intercorporate loans and investments [Section 372 A].

A copy of Special Resolution must be filed with the registrar within 30 days of passing it.

For Example

A special resolution regarding to **Commence a New Business:**

"RESOLVED that pursuant to Section 149 (2A) of the companies Act, approval be and is hereby given to the commencement by the company of all or any of the businesses specified in clause IV of the association of the company"

Table 6.1 Distinction between Ordinary Resolution and Special Resolution

Basis	Ordinary Resolution	Special Resolution
1. Nature of Business	In this case, items of ordinary business require an ordinary resolution.	In this case, items of special business require a special resolution.
2. Votes required to pass	It is passed by a simple majority i.e. votes casted in favour of a resolution should be more than votes against it.	It is passed by a 3/4th majority i.e. voted cast in favour of a resolution should be 3 times than the votes cast against it.

Meeting

3. Explanatory Statement	In this case no explanatory statement is required to be attached with the notice of the meeting.	In this case an explanatory statement is required to be attached to the notice and a copy of special resolution must be sent to registrar of companies within 30 days of passing resolution.
4. Special vote of Chairman.	In this case if there is situation of equality of votes, the Chairman can give his deciding vote.	There is nothing like casting of vote for the chairman in the case of special resolution.

b) Resolution requiring a Special Notice [section 190]

Under Companies Act, certain resolutions require Special Notice to be given. The object of the notice is to give the members sufficient time to consider the proposed resolution, and also to give the Board of Directors an opportunity to indicate their views, on the resolution if it is not proposed by them but by some other shareholders.

Details about Resolution Requiring Special Notice

- A resolution requiring special notice is not actually an independent class of resolutions.
- Such a resolution may be an ordinary or special resolution.
- It is a kind of an ordinary resolution, with the difference that here the mover of the proposed resolution is required to give special notice of at least 14 days to the company before moving the resolution and the company in turn, is required to give notice of the resolution to the shareholders at least seven days before the meeting either individually or through the advertisement in local newspaper.

But Section 190 of the Companies Act requires that a special notice may be given in respect of the following resolutions:-

- a. A resolution at an Annual General Meeting appointing an auditor, a person other than retiring auditor [Section 225(1)],
- b. A resolution requiring that the retiring auditor shall not be reappointed [Section 225(1)],
- c. A resolution to remove a Director before the expiry of his period of office [Section 284(2)],
- d. A resolution to appoint another Director in place of the removed director [Section 284(2)],
- e. Matters for which articles of a company provide for giving of a special notice.

For Example

An Ordinary Resolution requiring special notice for appointment of an auditor in place of retiring auditor:

"RESOLVED that M/s Shabnam LTD., the retiring auditors of the company, be not re-appointed and resolved further that M/s Kanti Lal & Co, Chartered Accountants, be and are

Meeting

hereby appointed as the auditors of the company to hold office from the conclusion of this annual general meeting till the conclusion of next annual general meeting at the remuneration of Rs 50,000 pm in addition to out-of-pocket expenses”

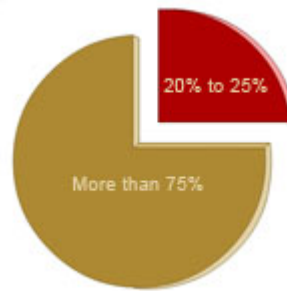


Figure 6.23: Special Resolution

Passing of Resolutions by Postal Ballot

It is not always possible for the entire body of shareholders to attend general body meetings to decide important issues. In order that majority of shareholders participate in the decision making process of the company the passing of resolutions through postal ballot was introduced in 2001 by inserting a new Section 192 A.

The provisions of the Section 192 A are:-

- “It provides that a public listed company shall get any resolution passed only by postal ballot relating to such business as the Central Government may notify, instead of transacting that business in general meeting of the company.
- Where a resolution is to be passed by postal ballot, notice is sent to the shareholders along with the draft resolution to send their assent or dissent in writing on a postal ballot within 30 days from the date of posting of notice.
- The notice is to be sent by registered post with acknowledgement due, or any other mode as prescribed by Central Government.
- Along with notice a prepaid envelope is sent for the communication of resolution.
- If ballot paper is destroyed by receiver he shall be held liable. Similarly any officer who does default shall be fined.”



Figure 6.24: Postal Ballot

Hence, important matters, in case of listed companies, such as alteration of object clause of Memorandum, Alteration of Articles, buy back of shares, issue of shares with differential voting rights etc can now be decided through postal ballot.

Circulation of Members Resolutions

It is right of the shareholders to use the company’s machinery for giving publicity among all the shareholders of the company for resolutions which they intend to propose or for statement which they want to make at the Annual General Meeting.

Section 188 provides a method for those members of a company who want to:

- i. Propose a resolution at the company’s next annual general meeting, or
- ii. Desire to circulate any explanation or statement related to a proposed resolution or any

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business at any general meeting.

If the requisite number of members makes a requisition as aforesaid, the company shall be bound to:

- i. Give a notice of the resolution intended to be moved at the next AGM;
- ii. Circulate the statement among the members entitled to notice of any general meeting.

However, before the company obliges the members in this respect, the following conditions must be satisfied:

1. The requisition must have been signed atleast :
 - a. By members having 1/20th of the total voting rights of all the members having the right to vote on the resolution; or
 - b. Hundred or more members having the right to vote on the resolution holding shares on which total amount of Rs 1 lakh or more has been paid -up.
2. The requisition must have been deposited at the registered office of the company:
 - a. At least six weeks before the meeting in case of a requisition requiring notice of a resolution, and
 - b. At least two weeks before the meeting in case of any other requisition.
3. The statement to be circulated does not contain more than 1000 words.
4. The requisitionists must have deposited with the company a sum reasonably sufficient to meet of the requisition.

Exceptions to Section 188

Section 188 authorises a company not to circulate a resolution or statement of the requisition in the following cases:

- a) The Central Government, on the application of the company or any other aggrieved party, is satisfied that the rights so conferred are being abused to secure needless publicity for defamatory matters.
- b) The Board of Directors of a Banking Company considers that the circulation of the statement would do negative to the interests of the company.

6.2.3.5 Minutes of the Meeting

Minutes are commonly referred as concise and precise written record of what took place in the meeting. As per Section 193(1) "Every company shall maintain minutes of all proceedings of general meetings and of all proceedings at meetings of its board of directors or committees of the board. Entries of the proceedings must be made in the books kept for that purpose within thirty days of every such meeting. Minutes are like the evidence of the proceedings of the meeting ."



Figure 6.25: Taking Minutes

Following are the provisions on the recording of Minutes

- The pages of Minute's Book are to be consecutively numbered .No attaching and pasting

Meeting

- of papers is allowed in minute book.
- The Minutes of each meeting shall contain a fair and correct summary of the proceedings.
- All appointments of officers made at the meetings shall be included in the Minutes.
- Each page of every Minute Book should be initialed or signed and at the last page of the record of the proceedings shall be signed by-
 - In case of a Board or Committee meeting, Chairman of the said meeting or Chairman of the succeeding meeting.
 - In case of the General Meeting the Chairman of the same meeting within 30 days of the meeting or in event of death or inability of Chairman by the Directors duly authorized by board.

Illustration:

Mr. Mohit, the Chairman of the board of M/s Mon and Co.Ltd. presided over the company's Annual General Meeting as the Chairman and immediately thereafter went abroad on company's work and was expected to return only after 50 days. He left without signing the minutes of the meeting. In this case as per section 193 any of the directors present at the meeting can sign the minutes of the meeting and it will remain valid.

- In case of a Board Meeting of Directors it shall contain details of Directors present and on which resolution which dissented and which agreed.
- The Minutes should not contain any irrelevant or defamatory matters. This decision lies with Chairman what to include and what not to include.

Board Minutes for 2012/13		
Item Number:	Topic:	
Item Description:		
Description:		
Formal Report:		
Special Action Proposed:		
Minutes:		
Motion for:	Seconded by:	
Vote:		
Vote Count: YES votes: NO votes: Abstentions:		
Follow-Up Action Items:		
	Action Due	Assigned To Return Date

Figure 6.26: Simple Format for MOM

- Section 194 says that "Minutes of the meetings kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein."
- If proper Minutes are not maintained then defaulting officers shall be fined up to Rs 500.
- The Minutes of the Shareholders meetings are required to be kept at the registered office of the company and open for inspection for atleast 2 hours everyday.
- No report at a general meeting shall be circulated or advertised at the expense of the company unless all matters required to be included in the Minutes are included in it. Also, it must be noted that Minute Books of Board meetings are not open to inspection to the shareholders or the public.

For example Minutes of any General Meeting of any Company would look like:-

Minutes of Annual General Meeting of M/s MON Ltd. held at 2 p.m at the Registered Office of the company on 31st October 2009

Present:

Mr.MON took the Chair.

Eight persons were present in person or by proxy.

The Chairman called the meeting to order at 2 p.m.

1. Notice

With the permission of the members, the notice convening the meeting was taken as read.

2. Adoption of Director's Report, etc

The chairman proposed the following resolution which was seconded by Mr.Satish.

Meeting

"RESOLVED that Directors Report , audited balance sheet as on 31.3.2008 and profit & loss account for the year ended 31.3.2008 and Auditors Report thereon be and the same are hereby received, considered and adopted."

The auditor's report was read by the Secretary. The Chairman then invited queries from the members present on the Directors Report, Accounts and Auditor's Report. There were no queries except that certain members commended the excellent results produced by the company.

The resolution was put to vote and unanimously carried.

3. Dividend

Shri Mohit proposed and Shri Satish seconded the following resolutions be passed as an ordinary resolution:

"RESOLVED that the dividend is recommended by the Board of Directors for the year 31.3.2008 at the rate of Rs2 per share on the equity share capital of the company, subject to deduction of tax at source and be and is hereby declared for payment to those shareholders whose names appeared on the Register of Members as on 31st October 2009..."

The resolution was put to vote and carried unanimously.

4. Directors

Shri Mohit proposed and Shri Satish seconded the following resolution to be passed as an ordinary resolution:

"RESOLVED that Shri Kamal director, who retires by rotation and is eligible for reappointment, be and is hereby reappointed a director of the company." The resolution was put to vote and unanimously adopted.

5. Auditors

Shri Mohit proposed and Shri Satish seconded the following resolution be passed as an ordinary resolution:

"RESOLVED that M/s Shyam and associates Chartered Accountants ,be and are hereby appointed auditors of the company to hold office from the conclusion of this meeting until conclusion of the next annual general meeting at a remuneration of Rs....plus out-of-pocket expenses."

The resolution was put to vote and unanimously adopted.

The meeting was terminated with a vote of thanks to the Chair.

Sd/-

Chairman

Dated 31st October 2009

Sections

IMPORTANT SECTIONS	
SECTION	DESCRIPTION
Section 165	Statutory meeting
Section 166	Annual general meeting
Section 171	Notice of the meeting
Section 174	Quorum of meeting

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Section 176	Proxy.
Section 179	Poll
Section189(1)	Ordinary resolution
Section189(2)	Special resolution
Section 190	Resolution requiring special notice.
Section 193	Minutes of the meetings



Meeting

Summary

Statutory Meeting

- Statutory Meeting is called to put the shareholders of the company, at as early as possible, in possession of all the important facts relating to the new company. It is held one month after and before the expiry of six months of the commencement of business.

Quorum

- The minimum number of members required to be present for a meeting to be valid.

Extraordinary General Meeting

- A meeting held between two AGM's.

Resolution

- A proposal when passed and accepted by the members present at the meeting becomes a resolution.

Types of resolution

- There are two types of resolutions **ordinary resolution** and **special resolution**

Requisites of valid meeting

- a) Meeting must be properly convened
- b) Meeting must be legally constituted
- c) Meeting must be properly conducted